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Message Text

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43
ACTION EUR-25

INFO OCT-01 ISO-00 JUSE-00 SCSE-00 SCA-01 DRC-01 RSC-01

/029 W
---------- 004201
R 131422Z SEP 74
FM AMEMBASSY BERN
TO SECSTATE WASHDC 9547

UNCLAS BERN 3441

E.O. 11652: N/A
TAGS: CFED, SZ (FIRST LIBERY FUND CASE)
SUBJECT: JUSTICE REQUEST FOR SWISS BANK WITNESSES

REF: STATE 180517

1. EMBASSY HAS CONTACTED FOUR BANKS LISTED IN REFTEL. ONLY INTER MARITIME BANK IS WILLING TO SEND A WITNESS TO U.S. TO TESTIFY RE AUTHENTICITY OF DOCUMENTS. THE NEUE BANK STATED THAT "WE WOULD BE PREPARED TO GIVE TESTIMONY (IN SWITZERLAND) IF WE WERE INVITED TO DO SO BY THE APPROPRIATE SWISS PENAL AUTHORITIES". THE SWISS BANK CORPORATION STATED THAT "WE WOULD BE PREPARED TO MAKE THE STATEMENTS CONCERNING THE COPIES BEFORE OUR AUTHORITIES IN BASEL, IF WE WERE REQUESTED BY THEM TO DO SO." THE COSMOS BANK ANNOUNCED ON SEPT 9 THAT IT WAS UNABLE TO PAY ITS OBLIGATIONS AND ASKED THE SWISS BANKING COMMISSION TO DECLARE A MORATORIUM ON COSMOS' PAYMENT OF ITS DEBTS WHILE THE BANK IS, IN EFFECT, RE-ORGANIZED. THE EMBASSY DOES NOT, THEREFORE, EXPECT A REPLY FROM COSMOS TO THE REQUEST TO SEND A WITNESS TO THE U.S. TO TESTIFY.

2. ALTERNATIVES SUGGESTED BY NEUE BANK AND SWISS BANK CORPORATION WOULD APPEAR TO BE MERELY REPETITION OF PREVIOUS TESTIMONY ORIGINALLY GIVEN IN RESPONSE TO LETTERS ROGATORY. EMBASSY DOUBTS THAT THIS WOULD ENHANCE ADMISSIBILITY OF EVIDENCE, BUT IF JUSTICE DEPT BELIEVES OTHERWISE WE WILL EXPLORE POSSIBILITIES. IN SUCH A
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PROCEEDING OPPOSING U.S. COUNSEL WOULD NOT, RPT NOT, BE

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PERMITTED TO DIRECTLY QUESTION WITNESS BEFORE SWISS JUDICIAL OFFICIAL. MOREOVER, PERMISSION FOR U.S. COUNSEL TO BE PRESENT WHEN WITNESS TESTIFIES CAN ONLY BE GIVEN BY APPROPRIATE CANTONAL AUTHORITIES. EMBASSY BELIEVES, HOWEVER, SUCH PERMISSION LIKELY TO BE GRANTED.

3. IN VIEW OF PROBLEMS ASSOCIATE WITH JOHN ROBERT HAY CASE (BERN 0713 AND PREVIOUS) EMBASSY RELUCTANT TO SUGGEST DEPOSITION BEFORE CONSULAR OFFICER ALTHOUGH THIS REMAINS A POSSIBILITY. IF JUSTICE DEPT WISHES, HOWEVER, WE COULD ATTEMPT TO ARRANGE DEPOSITION. WE WOULD NEED THE SPECIFIC QUESTIONS TO BE PUT TO EACH WITNESS BEFORE APPROVAL COULD BE SOUGHT. BANKS CONCERNED AS WELL AS FEDERAL DEPT OF JUSTICE AND POLICE WOULD HAVE TO AGREE TO THIS PROCEDURE. FDJP WOULD PROBABLY CONCUR BUT REACTION OF BANKS PROBLEMATIC.
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